

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
Litigation,

No. 2:15-MD-02641-DGC

**[PROPOSED] AMENDED CASE  
MANAGEMENT ORDER NO. 17**

(Stipulation and Order Concerning  
Protective Order and Redactions of  
Material from Defendants' Expedited  
ESI Production)

To expedite document production of ESI from Defendants, the parties, through their respective counsel, have agreed to a primarily “no-eyes-on” document production as to relevancy while still performing a privilege review for ESI. Defendants will be producing subsequent to this Order. That procedure requires certain changes to protection and requirements in the Stipulated Protective Order (Doc. 268) and Case Management Order No. 7 and corresponding Exhibit A (Doc. 401) for ESI produced pursuant to this process. To the extent that any of the below provisions are inconsistent with either the protective order (Doc. 268) or Case Management Order No. 7 and corresponding Exhibit A (Doc. 401), the below provisions shall control all documents produced pursuant to this Order.

This Amended Case Management Order replaces in its entirety the original Case Management Order No. 17 and any inconsistent provisions in the Stipulated Protective Order (Doc. 268), including the attached revised Exhibit A. THEREFORE, IT ORDERED as follows:

The parties have agreed on an ESI production process (the “Process”). All ESI produced by Defendants pursuant to the Process will be subject to the following terms:

1           1.       At the time of production, Defendants will identify the documents or ESI as  
2 being produced pursuant to the Process and subject to the restrictions of this Case  
3 Management Order (the “Process ESI”).

4           2.       The Process ESI shall be subject to the Stipulated Protective Order (Doc.  
5 268) entered in this case and the terms of this CMO. Nothing in this CMO shall prevent  
6 the use of any Process ESI in other actions brought by the plaintiff’s counsel, so long as a  
7 substantially comparable protective order, including both the terms of the Stipulated  
8 Protective Order (Doc. 268) and this CMO, is entered in those other actions. Paragraph 12  
9 of the Stipulated Protective Order (Doc. 268) is hereby amended consistent with this  
10 Paragraph.

11           3.       Prior to using any document or ESI from the Process ESI as part of a filing,  
12 at a deposition, or at a trial or hearing in this matter, Plaintiffs shall make a good faith  
13 effort to identify whether the document or ESI contains any information that is subject to  
14 redaction under Case Management Order No 7 and corresponding Exhibit A (Doc. 401)  
15 and to redact any such information in accordance with that Order and redaction protocol.

16           4.       Defendants shall independently have the right to identify any documents or  
17 ESI from the Process ESI, including documents identified by Plaintiffs pursuant to  
18 Paragraph 3, as subject to the requirements of Case Management Order No. 7 (Doc. 401)  
19 and to require the redaction of the information set forth in that Order; in that event,  
20 Defendants shall provide Plaintiffs with a redacted version of the subject documents or  
21 ESI with the same production Bates number(s) and Plaintiffs shall destroy any unredacted  
22 copies or versions of the document that they possess.

23           5.       Defendants shall have the right to identify any document, file, or other form  
24 of ESI produced pursuant to the Process as both being irrelevant to the matters in dispute  
25 in this MDL and containing trade secret or other confidential information and to “claw  
26 back” such ESI or documents from the production. After Plaintiffs use a document or ESI  
27 from the Process ESI as part of a filing, at a deposition, or at a trial or hearing in this  
28 matter, Defendants shall have 30 days to seek claw back of the particular document

1 pursuant to this Paragraph; this latter requirement does not apply to Process ESI that has  
2 not been used by Plaintiffs as part of a filing, at a deposition, or at a trial or hearing in this  
3 matter, which may be clawed back at any time.

4 6. Plaintiffs shall have the right to challenge any designation or claw back by  
5 Defendants under Paragraphs 4 or 5 by submission of the ESI or document to the Court  
6 under seal, and any filings that refer to the protected substance of the ESI or document  
7 must, likewise, be made under seal.

8 7. Federal Rule of Evidence 502(d) protection for privileged information  
9 produced pursuant to the Process:

- 10 a. Pursuant to Federal Rule of Evidence 502(d), production or disclosure  
11 pursuant to the Process of the substance or content of documents, materials,  
12 or other information that is protected by the attorney-client privilege, work-  
13 product protection, or any other privilege or protection shall not amount to  
14 waiver of the privilege and/or protection in this MDL, or in any other  
15 federal or state proceeding.
- 16 b. If Plaintiffs identify a document, material, or other information in the  
17 documents and ESI produced pursuant to the Process that reasonably  
18 appears to be protected by any privilege or other protection, they shall  
19 promptly notify Defendants in writing or email. If the Defendants  
20 determine that the document, material, or other information is privileged or  
21 otherwise protected, it shall make such an assertion in writing within 30  
22 days of receipt of notification. Once the privilege or protection is asserted,  
23 the parties shall follow the process discussed in Federal Rule of Civil  
24 Procedure 26(b)(5)(B). Failure to assert the privilege or protection within  
25 30 days of receipt of notification shall amount to waiver of any privilege or  
26 protection only of the document, material, or other information identified in  
27 the notification, subject to Federal Rule of Evidence 502(a).  
28

1 c. For any document, material, or other information produced or disclosed  
2 during discovery, and not identified pursuant to section (b) of this  
3 Paragraph, Defendants shall assert any claim of privilege or protection in  
4 writing (including by email) within 30 days after Plaintiffs use the document  
5 or ESI as part of a filing, at a deposition, or at a trial or hearing in this  
6 matter. Once the privilege or protection is asserted, the parties shall follow  
7 the process discussed in Federal Rule of Civil Procedure 26(b)(5)(B).  
8 Failure to assert the privilege or protection shall amount to waiver of the  
9 privilege or protection only of the document, material, or other information  
10 used, subject to Federal Rule of Evidence 502(a).

11 d. Unless waived under sections (b) or (c), at any time, a party that produces  
12 any document, material, or other information that it believes to be protected  
13 by the attorney-client privilege, work-product protection, or any other  
14 privilege or protection may assert the privilege or protection in writing.  
15 Once the privilege or protection is asserted in writing, the parties shall  
16 follow the process discussed in Federal Rule of Civil Procedure  
17 26(b)(5)(B).

18 8. To the extent that the documents or ESI produced pursuant to the Process  
19 contain any adverse event reporter names or information of a patient who is not a party to  
20 this litigation and which would otherwise be redacted in accordance with Case  
21 Management Order No. 7, Plaintiffs and their counsel and agents shall not contact the  
22 patient or reporter of an adverse event unless and until the parties go through the  
23 processes outlined in Paragraphs 5 and 7 of this Case Management Order with respect to  
24 the redaction of information and this Court determines the information is not subject to  
25 redaction.  
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**EXHIBIT A****IN THE UNITED STATES DISTRICT COURT****FOR THE DISTRICT OF ARIZONA****IN RE: BARD IVC FILTERS  
PRODUCTS LIABILITY LITIGATION**

No. MD-15-02641-PHX-DGC

**AGREEMENT TO MAINTAIN  
CONFIDENTIALITY**

I, \_\_\_\_\_ (Name), as a principal in \_\_\_\_\_  
 (“Law Firm”), have been given and have read a copy of the Amended Case Management  
 Order No. 17 and the Stipulated Protective Order (Doc 268) (the “Orders”) in the case of  
 MDL No. 2641, pending in the United States District Court District of Arizona, as have  
 all members of the Law Firm working on this litigation. We understand and will strictly  
 adhere to the contents of said Orders. We understand that produced material disclosed to  
 us is subject to the Orders of this Court and that we are prohibited from copying,  
 disclosing, or otherwise using such material except as provided by said court Orders. We  
 understand that any member of the Law Firm’s unauthorized disclosure of any  
 information protected by the Orders or contact of a patient or reporter of an adverse event  
 in violation of the Orders may constitute contempt of court, and we agree to be personally  
 subject to the jurisdiction of this Court for the purpose of enforcing our obligations under  
 this Agreement, the Orders, and any contempt proceeding that may be instituted for the  
 Law Firm’s violation of the terms of this Acknowledgment and the Orders. I also  
 understand that my signature on this “Agreement to Maintain Confidentiality,” indicating  
 my agreement, the agreement of the members of the Law Firm working on this litigation  
 and the Law Firm’s agreement to be bound by the terms of the Orders, is required before  
 me and the members of the Law Firm may be allowed to receive and review any produced  
 document and materials that are protected under the Orders.

Date: \_\_\_\_\_

Print Signature: \_\_\_\_\_

Signature: \_\_\_\_\_